

Exhibit B
****SAMPLE****
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
_____ **DIVISION**

Name of the Plaintiff(s),		
Plaintiff(s),		
		CIVIL ACTION NO.:
vs.		_____
Name of the Defendant(s),		
Defendant(s).		

PRETRIAL ORDER

A pretrial conference was held in the above case on _____, wherein,
or as a result of which, the following proceedings were held and actions taken:

(1) **APPEARANCES:** Appearing at the conference were:

For (Plff(s)): _____

For (Dft(s)): _____

(2) **JURISDICTION AND VENUE:**

a. The court has subject matter jurisdiction of this action under
the following statutes, rules or cases:

42 U.S.C. §2000e et seq.; 29 U.S.C. §621-634; 42 U.S.C. §12101 et
seq.; 28 U.S.C. §1331; 28 U.S.C. §1343(a)(4).

b. All jurisdictional and procedural requirements prerequisite to maintaining this action have been met.

c. Is personal jurisdiction or venue contested?

_____ Yes _____ No

(3) **PARTIES AND TRIAL COUNSEL:** The parties before the Court and designated trial counsel are correctly named as set out below:

PARTIES

TRIAL COUNSEL

Plaintiff(s)

Defendant(s)

(4) **PLEADINGS:** The following pleadings have been allowed:

Complaint by Plaintiff and Answer by Defendant

(5) **STATEMENT OF THE CASE:**

a. **Narrative Statement of the Case.**

The Plaintiff, XXX, a paraplegic male now 49 years old, brings this action for age, sex, and disability discrimination against the Defendant YYY. Mr. XXX contends the Defendant YYY discriminated against him because of his age, sex, and/or disability in failing to hire him for the position of Administrative Assistant/Receptionist in the YYY's Police Department in [date]. Mr. XXX seeks back pay he has lost, other damages, and other relief.

b. Undisputed Facts.

1. Mr. XXX is a male and was born [date - month and year only].
2. Mr. XXX, a paraplegic, has been confined to a wheelchair since 1981 when he injured his spine in a car wreck.
3. He worked for the Defendant YYY in Defendant YYY's Police Department from 1984 until July 2001.
4. His duties changed somewhat over the years from dispatcher to administrative assistant / receptionist duties.
5. Beginning in 1998, the position was officially listed as "Administrative Assistant/Receptionist to the Police Department."
6. In July 2001 Mr. XXX left Defendant YYY to work as an independent sales agent with AFLAC, selling health and life insurance, on a full-time basis.
7. In November 2006, Mr. XXX was asked to fill in as a substitute for the full-time assistant/receptionist, on vacation, holidays, or sick days, and he did so.
8. In mid-May 2007 the full-time assistant left the job with Defendant YYY.
9. After this, plaintiff was asked to continue substituting during the hiring process and he agreed.
10. Defendant YYY placed an advertisement for the position in the newspaper and Mr. XXX, along with others, submitted an application and was interviewed.
11. ZZZ, a non-disabled female 23 year old, was hired for the position in late July, 2007, and started working full-time for Defendant YYY on August 13, 2007.

c. Plaintiff's Claims.

I. Failure to hire based on disability.

A. Statute sued under: the Americans with Disabilities Act of 1990, 42 U.S.C. §12101 et seq.

B. Major cases: EEOC v. Joe's Stone Crabs, Inc., 296 F.3d 1265, 1273 (11th Cir. 2002) (elements of prima facie case of failure to hire); Sledge v. Goodyear Dunlop Tires North America, Ltd., 275 F.3d 1014, 1015 n.1 (11th Cir. 2001)(prima facie elements of failure to hire claim).

C. Factual allegations:

- (1) Plaintiff applied for the position in question with the Defendant.
- (2) Plaintiff is a paraplegic and has been at all times material to this case.
- (3) Plaintiff was qualified for the position.
- (4) Despite Plaintiff's qualifications, he was not hired.
- (5) The position was filled by a non-disabled person.

II. Failure to hire because of sex

A. Statute sued under: Title VII of Civil Rights Act of 1964, as amended, 42 U.S.C. §2001e et seq. and the Civil Rights Act of 1991, 42 U.S.C. §1981a.

B. Major cases: EEOC v. Joe's Stone Crabs, Inc., 296 F.3d 1265, 1273 (11th Cir. 2002) (elements of prima facie case of failure to hire); Sledge v. Goodyear Dunlop Tires North America, Ltd., 275 F.3d 1014, 1015 n.1 (11th Cir. 2001)(prima facie elements of failure to hire claim).

C. Factual allegations:

- (1) Plaintiff applied for a position with the Defendant.
- (2) Plaintiff is a male.
- (3) Plaintiff was qualified for the position in question.
- (4) Despite his qualifications, Plaintiff was not hired.
- (5) The position was filled by a female.

III. Failure to hire because of age

A. Statute sued under: the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §621-634.

B. Major cases: EEOC v. Joe's Stone Crabs, Inc., 296 F.3d 1265, 1273 (11th Cir. 2002) (elements of prima facie case of failure to hire); Sledge v. Goodyear Dunlop Tires North America, Ltd., 275 F.3d 1014, 1015 n.1 (11th Cir. 2001)(prima facie elements of failure to hire claim).

C. Factual allegations:

- (1) Plaintiff applied for a position with the Defendant.
- (2) Plaintiff was 47 years old at the time.
- (3) Plaintiff was qualified for the position in question.
- (4) Despite his qualifications, Plaintiff was not hired.
- (5) The position was filled by a significantly younger person.

d. Defendant's Defenses.

I. Failure to hire because of disability

- A. Defendant generally denies plaintiff's claim.
- B. Defendant avers it had legitimate business reason(s) for not hiring plaintiff to his desired position. Chapman v. AI Transport, 229 F.3d 1012 (11th Cir. 2000).
- C. Defendant's stated reason(s) are true. Chapman, citing Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133, 120 S.Ct. 2097, 147 L.Ed. 105 (2000); Coombs v. Plantation Patterns, Meadowcraft, Inc., 106 F.3d 1519 (11th Cir. 1997); Forrester v. Rauland-Borg Corporation, 453 F.3d 416 (7th Cir. 2006).
- D. Plaintiff's comparators are not equivalent to plaintiff. Chapman, 229 F.3d 1012.

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- D. Plaintiff's comparators are not equivalent to plaintiff. Chapman, 229 F.3d 1012.

IV. Other defenses

- A. Defendant pleads the benefits of 42 U.S.C. § 1981a, which contains graduated levels of damages which may be awarded in Title VII, ADEA, and ADA cases.
- B. Defendant pleads failure to mitigate damages.
- C. Defendant pleads set off.
- D. Defendant has pleaded the Mount Healthy defense, should the facts revealed at trial implicate its use.

(6) **DISCOVERY AND OTHER PRETRIAL PROCEDURES:**

- a. Pretrial Discovery.
 - i. Pursuant to previously entered orders of the court, discovery is closed.
- b. Pending Motions.

None.

c. Motions in Limine.

Motions in limine, including any *Daubert* motions, must be filed at least fourteen (14) days in advance of the scheduled trial date and shall be accompanied by supporting memoranda, with pinpoint cites. Oppositions are due three (3) calendar days thereafter. As to each matter counsel seeks to exclude, counsel shall indicate whether the exclusion is “opposed” or “unopposed” by counsel for the other side. Parties are encouraged to resolve evidentiary issues by stipulation whenever possible.

- (7) The parties must provide to other parties and promptly file with the court the following information regarding the evidence that it may present at trial other than solely for impeachment or rebuttal:

(A) the name and, if not previously provided, the address and telephone number of each witness, separately identifying those whom the party expects to present and those whom the party may call if the need arises;

(B) the designation by page and line number of those witnesses whose testimony is expected to be presented by means of a deposition and, if not taken stenographically, a transcript of the pertinent portions of the deposition testimony; and

(C) an appropriate identification (including Bates number if applicable) of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Unless otherwise directed by the court, these disclosures must be made at least thirty (30) days before trial.

Within seven (7) calendar days thereafter, a party may serve and promptly file a list disclosing (i) any objections to the use under Rule 32(a) of a deposition designated by another party under the above

subparagraph (B); (ii) all objections, together with the grounds therefor, that may be made to the admissibility of materials identified under the above subparagraph (C); and (iii) any counter-designations of those portions of depositions that a party wishes to reserve the right to introduce, without regard to whether the opposing party already has designated the same portions of testimony. Objections not so disclosed are waived unless excused by the court for good cause, such as that the objecting party could not determine the basis of the objection prior to trial.

If there are unresolved objections after the parties consult, at least fourteen (14) calendar days before trial, the parties shall submit to the court, in writing, proposed deposition testimony and trial exhibits and any unresolved objections thereto. A brief argument may be submitted at that time, if necessary. The unresolved objections and arguments (if any) must be emailed to chambers of the undersigned.

No exhibits will be admitted or be permitted to be shown to the jury unless the party offering them has complied with the E-Government Act of 2002. This means that the following must be redacted from any document a party seeks to introduce into evidence or to show to the jury: (1) social security numbers (in their entirety), dates of birth (other than the year), the names of persons known to be minors (although their initials may remain unredacted), and financial account numbers (other than the last four digits).

Oral arguments on any unresolved pretrial matters will be heard on _____, at _____, at the _____ United States Courthouse, _____, Alabama. If the court determines that a hearing is not necessary, it will cancel this setting and notify the parties.

- (8) ***TRIAL (JURY)**: Any **proposed voir dire** is due at least ten (10) business days prior to the scheduled trial date and must be emailed to chambers of the undersigned. The parties should indicate which questions (if any) they want the court to ask and which questions they propose to ask themselves. At least ten (10) business days prior to the scheduled trial date, the parties must file a **single, joint proposed jury**

charge, including all necessary instructions, or definitions applicable to the specific issues of the case. The parties need not submit standard generic instructions regarding routine matters; e.g., burden of proof, credibility of witnesses, duty of jurors, etc.

- a. **Each** requested **instruction** must be numbered and presented on a separate sheet of paper with authority cited.
- b. In joint, proposed jury materials, counsel are to include all necessary instructions or definitions, specifically including (1) the *prima facie* elements of each cause of action and defense asserted; (2) legal definitions required by the jury; (3) items of damages; and (4) methods of calculation of damages. Counsel are to use the 11th Circuit Pattern Jury Instructions, or appropriate state pattern jury instructions, as modified by case law or statutory amendments, wherever possible. Any deviations must be identified, and accompanied with legal authorities for the proposed deviation.
- c. Even if the parties, in good faith, cannot agree on all instructions, definitions or questions, the parties should nonetheless submit a single, **unified** charge. Each disputed instruction, definition, or question should be set out in bold type, underline or italics and identified as disputed. Each disputed item should be labeled to show which party is requesting the disputed language. Accompanying each instruction that deviates from pattern charges shall be all authority or related materials upon which each party relies. The parties shall also submit a copy as an e-mail submission to hopkins_chambers@alnd.uscourts.gov.
- d. If the verdict form will include special interrogatories for the jury to answer, counsel shall include such special interrogatories with their proposed jury instructions.

(9) **COMPUTATION OF DEADLINES:**

- a. All deadlines shall be computed without regard to Fed. R. Civ. P. 6(a). However, if a document is due on a day that is a weekend or a federal holiday, then the deadline for filing such document shall be extended until the next business day following the day on which the document would otherwise be due.

(10) **CHAMBERS EMAIL:**

- a. All documents that are emailed to chambers must be in WordPerfect® (strongly preferred) or Word® format and sent to: hopkins_chambers@alnd.uscourts.gov.

(11) **VOIR DIRE:**

- a. Maximum of ____ minutes per side.

(12) **OPENING/CLOSING STATEMENTS:**

- a. Maximum of ____ minutes per side on opening statements.
- b. Maximum of ____ minutes per side on closing arguments. The plaintiff may reserve not more than half of his closing argument. However, if the plaintiff intends to ask for a specific sum of money, he must do so before the defendant makes its closing argument.

(13) **TRIAL DATE:**

- a. This case is set for trial (jury / non-jury) on _____, in _____, Alabama, at the United States Courthouse, _____, _____, Alabama _____, and is anticipated to last _____ (____) days (including jury selection, opening statements, all evidence, a charge conference, closing

arguments, and the court's instructions to the jury, but not including jury deliberations).

It is **ORDERED** that the above provisions be binding on all parties unless modified by further order for good cause shown.

DONE this the _____ day of _____, 200__.

NOTES:

1. This Pretrial Order form may be accessed at www.alnd.uscourts.gov; Court Info, Judicial Officers, Virginia Emerson Hopkins, Pretrial Order.

2. To the extent that the court's prior orders conflict with any of the language or deadlines set forth above, this pretrial order controls.

(Revised 6/15/09)